

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **VICE-CHAIRMAN PAUL CLARK**, on March 26, 2003 at 9:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. George Everett (R)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Michael Lange (R)
Rep. Bruce Malcolm (R)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. John Parker (D)
Rep. Holly Raser (D)
Rep. Diane Rice (R)
Rep. Scott Sales (R)
Rep. Ron Stoker (R)
Rep. Bill Thomas (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pamela Schindler, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 419, SB 438, 3/19/2003

Executive Action: HB 670-Do Pass As Amended
SB 438-Tabled
SB 419-Tabled
SB 298-Tabled
SB 283-Be Concurred In

HEARING ON SB 419

Sponsor: SEN. WALTER MCNUTT, SD 50, Sidney, Montana

Opening Statement by Sponsor:

SEN. MCNUTT opened the hearing on SB 419 by stating to the Committee that this bill would limit certain litigation costs by curtailing what professional witnesses can charge.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 23}

Proponents' Testimony:

Greg Van Horsen, State Farm Insurance Company, spoke to the Committee in support of SB 419 and explained to the members the different witnesses that typically testify in legal proceedings. They are:

- 1) Lay "Fact" witnesses (witnesses who happen to be in the proximity of an accident and has information as to what happened in the accident).
- 2) A professional person who provides care such as a physician, chiropractor, architect or engineer, etc. depending on the type of lawsuit. Someone who knows the treatment of the individual and that is necessary to discover the ends of justice.
- 3) Expert witnesses; this person has formed an opinion as to causation or some other issue in the lawsuit that is separate from the participants in the lawsuit.

This bill would effect the second class of witnesses, the professional person.

{Tape: 1; Side: A; Approx. Time Counter: 23 - 79}

Lee Leveque, Attorney, Self, spoke to the Committee regarding the exorbitant costs that are now being levied by the professional, not expert witnesses in litigation matters. Mr. Leveque gave several examples of the high fees that are being charged by professionals, especially physicians.

{Tape: 1; Side: A; Approx. Time Counter: 79 - 175}

Al Smith, Montana Trial Lawyers Association, spoke in support of SB 419, as a "soft" proponent. Mr. Smith and his organization would support an hourly wage, but no hard cap on the total amount.

{Tape: 1; Side: A; Approx. Time Counter: 175 - 200}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REPS. SALES, GALLUS, THOMAS, LASZLOFFY, EVERETT, and NOENNIG questioned the sponsor and Mr. Leveque about the cap on the hourly fee, contingency cases, when the "clock" starts, and finally why physicians are hesitant to appear. The supaeona issue and the fee that is currently given for a supaeoned appearance was also discussed with the Committee members and the witnesses.

{Tape: 1; Side: A; Approx. Time Counter: 200 - 500}

{Tape: 1; Side: B; Approx. Time Counter: 0 - 17}

Closing by Sponsor:

SEN. MCNUTT closed the hearing on SB 419.

{Tape: 1; Side: B; Approx. Time Counter: 17 - 18.5}

HEARING ON SB 438

Sponsor: **SEN. BOB DEPRATU, SD 40, Whitefish, Montana**

Opening Statement by Sponsor:

SEN. DEPRATU opened the hearing on SB 438 and proceeded to inform the Committee members that this bill was brought at the request of an attorney friend. Since this bill was drafted, there have been deficits found. With that, **SEN. DEPRATU** requested that SB 438 be indefinitely postponed.

EXECUTIVE ACTION ON SB 438

Motion/Vote: REP. GALLUS moved that SB 438 BE TABLED. Motion carried unanimously. (voice vote)

{Tape: 1; Side: B; Approx. Time Counter: 20 - 66}

EXECUTIVE ACTION ON HB 670

Motion: REP. GALLUS moved that HB 670 DO PASS.

Motion: REP. GUTSCHE moved that HB 670 BE AMENDED.

EXHIBIT(juh64a01)

Discussion:

REP. BUZZAS inquired about the licensing intent that this amendment would address. Mr. MacMaster explained the amendment. REPS. BUZZAS and STOKER discussed the amendment further.

Vote: Motion that HB 670 BE AMENDED carried 17-1 with REP. EVERETT voting no. (voice vote)

Motion: REP. LASZLOFFY moved that HB 670 BE AMENDED.

Discussion:

REPS. LASZLOFFY, NOENNIG, RASER, and CLARK discussed this amendment as it refers to the Fiscal Note and the revenue generated from the increase in fees or the increase in penalties.

Vote: Motion that HB 670 BE AMENDED carried 13-5 with REPS. HARRIS, NOENNIG, PARKER, RASER, and THOMAS voting no. (voice vote)

Motion: REP. FACEY moved that HB 670 DO PASS AS AMENDED.

Motion: REP. GUTSCHE moved that HB 670 BE AMENDED.

Discussion:

REPS. GUTSCHE, FACEY, RICE, CLARK, LASZLOFFY, and GALLUS discussed this amendment regarding the "repealer" language as to 16-11-303 and 16-11-120, and whether a license is site specific.

Vote: Motion that HB 670 BE AMENDED carried unanimously. (voice vote)

Motion/Vote: REP. GUTSCHE moved that HB 670 DO PASS AS AMENDED.
Motion carried 11-7 with REPS. EVERETT, LANGE, LASZLOFFY,
MALCOLM, NEWMAN, RICE, and SALES voting no. (roll call vote)

{Tape: 1; Side: B; Approx. Time Counter: 66 - 500}

{Tape: 2; Side: A; Approx. Time Counter: 0 - 111}

EXECUTIVE ACTION ON SB 283

Motion: REP. RICE moved that SB 283 BE CONCURRED IN.

Discussion:

REPS. RICE and NOENNIG discussed the bill as it relates to the
venue versus. jurisdiction language.

Motion: REP. FACEY moved that SB 283 BE AMENDED.

Discussion:

Mr. MacMaster explained the amendment.

Vote: Motion that SB 283 BE AMENDED failed 6-12 with REPS.
FACEY, LASZLOFFY, NOENNIG, RICE, STOKER, and THOMAS voting aye.
(roll call vote)

Motion/Vote: REP. CLARK moved that SB 283 BE CONCURRED IN.
Motion carried unanimously. (roll call vote)

{Tape: 2; Side: A; Approx. Time Counter: 111 - 340}

EXECUTIVE ACTION ON SB 419

Motion: REP. MALCOLM moved that SB 419 BE CONCURRED IN.

Discussion:

REPS. MALCOLM, NOENNIG, STOKER, CLARK, and THOMAS discussed the
bill as it relates to the fees in private industry, "Rule 66",
and physician's reluctance to testify.

Vote: Motion that SB 419 BE CONCURRED IN failed 7-11 with REPS. CLARK, GALLUS, HARRIS, NEWMAN, PARKER, RASER, and SHOCKLEY voting aye. (roll call vote)

Motion/Vote: REP. GALLUS moved that SB 419 BE TABLED AND THE VOTE REVERSED. Motion carried unanimously.

{Tape: 2; Side: A; Approx. Time Counter: 340 - 500}

{Tape: 2; Side: B; Approx. Time Counter: 0 - 76}

EXECUTIVE ACTION ON SB 298

Motion: REP. SALES moved that SB 298 BE CONCURRED IN.

Discussion:

REPS. LANGE, CLARK, GUTSCHE, RICE, STOKER, GALLUS, RASER, NOENNIG, and SHOCKLEY discussed the bill either in support or opposition, the environmental issues that would be addressed, district courts, venue and jurisdiction matters and "Forum Non-Convene."

Vote: Motion that SB 298 BE CONCURRED IN failed 7-11 with REPS. EVERETT, GALLUS, LANGE, LASZLOFFY, RICE, STOKER, and THOMAS voting aye. (roll call vote)

Motion/Vote: REP. GALLUS moved that SB 298 BE TABLED AND THE VOTE REVERSED. Motion carried unanimously.

{Tape: 2; Side: B; Approx. Time Counter: 76 - 100}

ADJOURNMENT

Adjournment: 10:50 A.M.

REP. JIM SHOCKLEY, Chairman

PAMELA SCHINDLER, Secretary

JS/PS

EXHIBIT (juh64aad)